



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-93-7*

FACTS:

You are a full-time employee of the City of Chicopee Highway Department (Department).

QUESTION:

Can you run for and, if elected, hold office as an Alderman-at-large while serving as a full-time employee of the Department?

ANSWER:

Although G.L. c. 268A will not prohibit you from running for the office of Alderman-at-large, if you are elected to that position, you may not be compensated in your current Department position.

DISCUSSION:

Section 20 prohibits a municipal employee from having a financial interest in a contract with a municipal agency, unless an exemption is available. Section 20 applies whenever an individual holds more than one position (at least one of which is appointed and compensated) in the same municipality. Therefore, if you are elected as Alderman, you will have a financial interest in your employment contract with the Department. *See EC-COI-80-89* (selectman has a financial interest in employment contract as a teacher).^{1/}

Applying the restrictions of §20, if you are elected to the position of Alderman-at-large, you will have a prohibited financial interest in your Department employment contract. In other words, unless an exemption applies, §20 will prohibit you from receiving compensation in your Department position. By definition, the position of alderman may not be designated as a special municipal employee position. G.L. c. 268A, §1(n).^{2/} The only exemption therefore available to an alderman who seeks to receive compensation in an appointed municipal position is found in §20(b). That exemption requires that the municipal employee meet certain specified criteria. Among the criteria are:

- (1) the employee must not be employed in an agency which regulates the activities of the contracting agency;
- (2) the employee cannot participate^{3/} in or have official responsibility^{4/} for any of the activities of the contracting agency;
- (3) the contract must be made after notice or competitive bidding;
- (4) the employee cannot be compensated for more than 500 hours in the second position during a calendar year.

As Alderman-at-large, it appears that you would have either regulatory control over, or you would participate in, activities of the Highway Department. *See EC-COI-91-9* (city councilors regulate and/or participate in activities of municipal agency); *83-158* (discussing meaning of “regulate”). Moreover, an alderman cannot receive compensation in a full-time appointed municipal position because the §20(b) exemption restricts additional compensated municipal employment to 500 hours during the course of a year. *See EC-COI-89-28* (full-time

police officer cannot also hold city council position without violating §20); 85-66. No other exemption from §20 is available to you. We note that §20 contains exemptions that allow a member of a board of selectmen or town council to hold an appointed municipal position provided that the selectman or town councillor complies with certain restrictions. No similar exemption to the §20 prohibition, however, is available to members of a board of alderman or city council.

Because you will not qualify for the §20(b) exemption and because no other exemptions are available to you, if you are elected to the position of Alderman-at-large, §20 will prohibit your receipt of compensation in your Department position. The §20 prohibition will not apply until you assume the office of Alderman-at-large. Furthermore, the conflict of interest law will not prohibit you from running for the office of Alderman-at-large. However, the Highway Department or the City of Chicopee may impose additional restrictions on running for political office or otherwise engaging in political activities. §23(e).

DATE AUTHORIZED: February 23, 1993

* Pursuant to G.L. c. 268B, §3(g), the requesting person has consented to the publication of this opinion with identifying information.

^{1/}However, an elected official's compensation is not received pursuant to an employment contract. *EC-COI-82-26*. Any compensation you may receive as Alderman will not be pursuant to an employment contract with the City. As a Department employee, you would not therefore have a prohibited financial interest in a municipal contract by virtue of your compensation as an Alderman.

^{2/}Similarly, the definition of "special municipal employee" excludes members of a city council as well as members of a board of selectmen in a town with a population in excess of 10,000 persons. G.L. c. 268A, §1(n). However, members of a board of selectmen in a town with 10,000 or fewer inhabitants are, by definition, special municipal employees.

^{3/}"Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

^{4/}"Official responsibility," the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action. G.L. c. 268A, §1(i).